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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/344,299 06/24/99 SCHWARTZ S 1538/20

026646
KENYON & KENYON
ONE BROADWAY
NEW YORK NY 10004

WM01/0801

EXAMINER

PENDLETON, B

ART UNIT	PAPER NUMBER
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2644

10

DATE MAILED:

08/01/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/344,299

Applicant(s)

SCHWARTZ ET AL.

Examiner

Brian T. Pendleton

Art Unit

2644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 5-7, 22, 23, 26, 27 and 30-35 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-18 is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-11, 19-21, 24, 25, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Election/Restrictions

Applicant's election with traverse of group I in a telephone conversation with Mr. Shawn O'Dowd is acknowledged. The traversal is on the ground(s) that claim 6 is included in group I. This is not found persuasive because claim 6 has groups of processors which is not found in any of the claims of group I.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Sims, Jr., US Patent 5,414,776. Sims, Jr. discloses a mixing system comprising microphones 12 and 14, attenuator controller 20, attenuators 13 and 17, and mixer 22, meeting claims 1, 2, 19 and 20. Per claim 3, there is disclosed preamplifiers 11 and 15. Per claims 4 and 21, there are two different attenuators, therefore, the signals are adjusted separately.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 8-11, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sims, Jr. in view of Barber, Jr. Sims, Jr. discloses a mixer having a pair of microphones, attenuators and a mixer circuit 22. However, Sims, Jr. does not disclose that the apparatus is placed near an instrument (snare drum). Barber, Jr. discloses a snare drum with a microphone placed near it. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Sims, Jr. invention for use with instruments. Since instruments have a wanted signal and can be interfered with extraneous noise or signals, one would have been motivated to find a system which provides for attenuating one signal while accepting another, such as done by Sims, Jr. Thus, it was obvious to place the Sims, Jr. invention in an instrument environment. Per claim 11, that is an obvious design choice.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sims, Jr. in view of Barber, Jr. as applied to claim 24 above in further view of Barger et al. The combination of Sims, Jr. and Barber, Jr. fail to disclose that one microphone is a pressure microphone and the other is an accelerometer. However, as evidenced by Barger et al, it was well known to use accelerometers in noise reduction techniques. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combination to make one of the microphones an accelerometer, per the teachings of Barger et al.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sims, Jr. in view of Barber, Jr. as applied to claim 24 above, and further in view of Duncan. The combination of Sims, Jr. and Barber, Jr. does not disclose an electromagnetic pickup. However, as evidenced by Duncan, such pickups were well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the electromagnetic pickup of Duncan in the combination of Sims, Jr. and Barber, Jr.

Allowable Subject Matter

Claims 12-18 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: see paper #5.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jones et al, US Patent 5,638,454.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Pendleton whose telephone number is (703) 305-9509. The examiner can normally be reached on M-F 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on (703) 305-4386. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-9508 for regular communications and (703) 308-5403 for After Final communications.

Art Unit: 2644

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

btp
July 18, 2001


FORESTER W. ISEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2700